

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA) Greensboro, North Carolina
) April 12, 2019
vs.) 10:18 a.m.
)
LEE MARVIN HARRIS,)
) Case No. 1:18CR249-2
Defendant.)

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE WILLIAM L. OSTEEN, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Sentencing - April 12, 2019

P R O C E E D I N G S

(At 10:18 a.m., proceedings commence.)

(Defendant present.)

MR. GALYON: Your Honor, the next matter is United States of America versus Lee Marvin Harris, Jr., 1:18CR249-2. He's represented by Peter Zellmer. The matter is on related to sentencing.

THE COURT: All right. I continued this matter because I had two concerns in the case with respect to the position of Mr. Harris. No. 1, the firearm, and predominantly the -- or to summarize it succinctly, what I viewed as inconsistent positions with respect to the plea agreement, which stipulated to forfeiture of the firearm and an objection to application of the plus two in the presentence report.

And, generally speaking, the facts are that the firearm was found on a shelf in a box in the closet of the bedroom that the defendant was using at the time he was involved in distribution of controlled substances. Those controlled substances, it appears from the facts, being stored in a Cadillac that was parked outside the home and parked. It didn't appear to be operational or it was remaining outside.

So for two reasons, one, I thought it was a close call as to whether -- or could be admittedly a close call as to whether or not the plus two should apply, but to the extent it was a close call in light of the Government's -- the

1 defendant's stipulation to forfeiture of that firearm, at least
2 in my mind, that fact moved the application of that adjustment
3 to a different category.

4 I was also concerned, as I indicated at some length,
5 with Mr. Harris's claim that he was not in a gang in his
6 efforts to -- what I perceived, to minimize his criminal
7 conduct in that it appears, regardless of the origins of this
8 DBC group, that at least a number of those individuals were
9 involved in the distribution of controlled substances, both at
10 New York Avenue as well as other places. And it seemed to me
11 applying whatever definition of gang or security threat group
12 would apply, that denying that the defendant is a member of a
13 gang of some description, security threat group, whatever you
14 want to call it, also substantially minimized the defendant's
15 criminal conduct.

16 Acceptance of responsibility under Chapter 3, as an
17 initial step, 3E1.1(a) asked if the defendant clearly -- or
18 states if the defendant clearly demonstrates acceptance of
19 responsibility for his offense, decrease the offense level by
20 two levels. In the application notes, there are a number of
21 factors the Court can take into consideration.

22 Application note 1(a) involves truthfully admitting
23 the conduct comprising the offense of conviction, which I
24 think, by entering a guilty plea, the defendant has done here.
25 And truthfully admitting or not falsely denying any additional

1 relevant conduct for which the defendant is accountable under
2 Section 1B1.3. A defendant is not required to volunteer or
3 affirmatively admit relevant conduct beyond the offense of
4 conviction, and the defendant may remain silent in respect to
5 relevant conduct beyond the offense of conviction, et cetera,
6 et cetera.

7 It goes on to say, a defendant who falsely denies or
8 frivolously contests relevant conduct that the Court determines
9 to be true has acted in a manner inconsistent with acceptance
10 of responsibility, but the fact that the defendant's challenge
11 is unsuccessful does not necessarily establish that it was
12 either a false denial or frivolous.

13 I think here, particularly with respect to the gun,
14 that's what troubles me the most. So Mr. Zellmer, we'll pick
15 up where we left off. Do you want to be heard on this?

16 **MR. ZELLMER:** Your Honor, as far as the forfeiture,
17 and perhaps this was my error in my legal advice to him, my
18 reading of the forfeiture surrender provision -- and I'll say I
19 have consulted with several other attorneys, and this was their
20 interpretation as well -- was that that provision in that plea
21 agreement was not an acknowledgment of a possessory or
22 ownership interest, but rather simply saying that there is no
23 objection to a forfeiture. And if someone lacks any possessory
24 or ownership interest in an object, then by virtue of that fact
25 they have no legal standing --

1 **THE COURT:** What did these attorneys say about an
2 affirmative representation that the firearm was -- either
3 facilitated the commission of or used in the commission of the
4 offense?

5 **MR. ZELLMER:** It was their position, it was certainly
6 my position as well upon reading it and advising my client,
7 that that -- that clause in the plea agreement did not imply
8 that he had a possessory interest, but rather that he was not
9 objecting --

10 **THE COURT:** I'm just asking. Does that
11 representation suggest that the firearm was used in the
12 commission of the offense or facilitated the commission of the
13 offense, in your opinion?

14 **MR. ZELLMER:** In my opinion, it is simply a lack of
15 objection to forfeiture. I can go back and look at the
16 language again, and if I made an error, I apologize. If my
17 legal interpretation was wrong, I apologize, but certainly that
18 was my legal representation upon reading --

19 **THE COURT:** All right. Pull up the facilitation
20 provision in the plea agreement. I'll read it.

21 **MR. ZELLMER:** Yeah, I appreciate that, Your Honor.
22 I'm having a hard time locating it.

23 **THE COURT:** Pursuant to 21 -- let's see, the
24 defendant, Lee Marvin Harris, knowingly and voluntarily
25 consents and agrees to forfeit to the United States, pursuant

1 to 21 USC Section 853 any property used or intended to be used
 2 in any manner or part to commit or to facilitate the commission
 3 of the offense in Count Seven. The specific property to be
 4 forfeited includes, but is not limited to, a Springfield .40
 5 caliber handgun.

6 So with respect to that specific phrase, "property
 7 used or intended to be used in any manner or part to commit or
 8 facilitate the commission of the offense in Count Seven," does
 9 that affirmatively represent that that firearm was used or
 10 intended to be used to facilitate the offense in Count Seven,
 11 in your analysis?

12 **MR. ZELLMER:** Certainly my analysis at the time of
 13 advising my client.

14 **THE COURT:** Right now. I don't care about what you
 15 told your client.

16 **MR. ZELLMER:** After -- after hearing Your Honor's
 17 persuasive argument, I can see --

18 **THE COURT:** So then the second question becomes who
 19 used it to facilitate the offense? Was it his father?

20 **MR. ZELLMER:** Your Honor, my -- my -- I have always
 21 been -- the facts that have been given to me by all the people
 22 are the ones that I presented to you.

23 **THE COURT:** Understood.

24 **MR. ZELLMER:** My advice to my client in signing that
 25 is that he was giving up any interest that he had, which was

1 none, and thus it was immaterial. Certainly I understand Your
2 Honor's interpretation, and I think that sounds like a valid
3 interpretation, and if that is a valid interpretation, then I
4 have clearly given my client bad advice, and for that I am
5 very, very sorry.

6 **THE COURT:** If it is, what's another good
7 interpretation of it? If that's a valid -- what is a good
8 interpretation?

9 **MR. ZELLMER:** That he is not going to contest any
10 forfeiture of the weapon or object to any forfeiture of any
11 other property that was seized and not wage any objections to
12 any seizures or forfeitures.

13 **THE COURT:** All right. Mr. Galyon, do you want to be
14 heard on this?

15 **MR. GALYON:** No, Your Honor.

16 **THE COURT:** I mean, do you -- does the Government
17 think he deserves acceptance?

18 **MR. GALYON:** Your Honor, I think that the question of
19 whether or not he falsely denied or frivolously contested, I
20 think is -- in the same way that the plus two is a close
21 question, I think that the issue of the acceptance is a close
22 question because I don't -- I don't doubt that at the time that
23 Mr. Harris entered the plea that he believed that he was --
24 that he admitted to the conduct, that is, that he admitted that
25 he had been involved in drug activity, and that the question of

1 the forfeiture of the firearm and his possession of the firearm
2 was probably an ancillary position, an ancillary concern.

3 And so, as to the acceptance, I don't think that he's
4 falsely -- that he is falsely denying as to the firearm. I
5 think it's -- I think it's a close question, but I think he
6 probably is not, and so as to the question of acceptance, you
7 know, as we stand, especially because he withdrew the
8 objection. As the Court recalls, he --

9 **THE COURT:** I do.

10 **MR. GALYON:** After the Court had put to Mr. Zellmer
11 the issue of the forfeiture provision and how that was
12 inconsistent, that he and -- that Mr. Zellmer and his client
13 had an opportunity to discuss that and that they withdrew the
14 objection, and for that reason, I think that that is indicative
15 of the fact that he is not falsely denying his involvement in
16 the conduct.

17 **THE COURT:** All right. You can have a seat,
18 Mr. Zellmer. I want to be clear on this. Absent the
19 forfeiture provision, take that out for just a moment, I think
20 it would be a close issue on the plus two. Evidence could go
21 either way. Forget about what the father said for just a
22 moment. The evidence could go either way. It's a judgment
23 call. No problem with the challenge, at least in my mind in
24 terms of acceptance. I think that's the type of thing that
25 acceptance of responsibility, the application notes, are

1 intended to encompass; no frivolous challenge, and it wouldn't
2 be a frivolous challenge.

3 Second, there's -- in my mind I can completely
4 understand taking a position of I don't care about the gun so,
5 fine, forfeit the firearm, because it doesn't matter. I
6 understand that position, but the defendant did more than that
7 in the plea agreement. The defendant affirmatively represented
8 that this property was, in fact, subject to forfeiture because
9 it was used or intended to be used in the commission of the
10 offense or to facilitate the offense.

11 Even then step No. 2 of that, that then begins to
12 trouble me, because I don't know any other way to read this
13 provision. I don't care what some lawyers say in this district
14 about a forfeiture provision not implicating any type of
15 possessory or ownership interest. I don't know how you forfeit
16 someone else's property. It's just beyond my comprehension
17 that somebody could say, oh, well, it's not my property, so
18 I'll just agree to forfeit it, and I'll not make any note of
19 that.

20 Anyway, No. 3, the affirmative presentation of
21 Mr. Harris's father's testimony to suggest to the Court that
22 this firearm was somehow inadvertently left in a closet years
23 ago, and to suggest or imply that nobody knew about it after
24 the forfeiture provision has been signed, that is -- that
25 sequence of events, true or not, is really troubling to me in

1 terms of acceptance of responsibility.

2 That whole sequence is I'm not responsible for what I
3 say, I'm talking about Mr. Harris now, not about counsel. I'm
4 not responsible for what I say in my plea agreement. I just
5 don't care enough about it to be accurate, but if what I say in
6 my plea agreement comes back to cause issues later with respect
7 to I don't want the plus two for the gun so let's object to it
8 because the Government can't prove it, after I've stipulated to
9 that, that is very troubling.

10 This issue doesn't come up often. It's only recently
11 that we've begun to see forfeiture provisions, specifically
12 relating to firearms, in plea agreements. Mr. Galyon, I can't
13 remember that beyond about a year or two ago. So it's a new --
14 we'll call it a new clause, but new or not, it is a clause that
15 has some meaning, and it's a representation to the Court that
16 certain facts exist. One, that the defendant has a sufficient
17 interest to forfeit the property to the Government, and, two,
18 that the property was used or intended to be used to commit or
19 facilitate the commission of the offense. And it is beyond my
20 comprehension that a defendant could come in and stipulate to
21 that and then turn around and say, no, I didn't possess the gun
22 during the course of this offense as set out in 2D1.1.

23 So I am going to give Mr. Harris all manner of
24 benefit of doubt here for withdrawing the plus two -- for
25 withdrawing the objection to the plus two, after the

1 inconsistency was pointed out, and I'm going to leave
2 acceptance of responsibility in tact. But in terms of
3 fashioning a sentence, both sides should be aware of the fact
4 that I am, as I've made clear, No. 1, very concerned about a
5 defendant who would take -- what I perceive to be inconsistent
6 positions in federal court in order to gain an advantage in the
7 sentencing process.

8 And, No. 2, I'm not going to obviously remove
9 acceptance for this gang issue, but it's another thing that
10 troubles me. It may very well be, and I'll credit Mr. Harris's
11 father's commentary about a group of individuals in the
12 neighborhood who grew up together, and they all love Cadillacs,
13 but the conduct that I see here, and the definition that I see
14 of security threat group or gang or whatever you want to call
15 it, and the photographs that have been presented, give me a
16 tremendous concern. And an individual who thinks that they can
17 come into court and deny what appears to be otherwise obvious
18 based on the facts presented, that's very troubling.

19 But, in any event, I'll hear from the parties with
20 respect to -- I'll make my findings. I guess I better go back.
21 So what do we have in the way of objections? Plus two for the
22 firearm was the only objection to the presentence report, other
23 than the facts with respect to the gang membership? Is that
24 correct? I've adjusted the drug quantity. That was the other
25 one.

1 **MR. ZELLMER:** Yes, that was also resolved, Your
2 Honor.

3 **MR. GALYON:** Yes, Your Honor.

4 **THE COURT:** Then where does that leave us,
5 Ms. Martin, in terms of guideline calculation?

6 **MS. MARTIN:** Your Honor, the total offense level is a
7 25. The criminal history category is a III. That's a
8 guideline imprisonment range of 70 to 87 months. Supervised
9 release will remain the same at six years, and a fine range is
10 20,000 to 2 million.

11 **THE COURT:** All right. All right. Then I will adopt
12 the presentence investigation report with the following change,
13 and that is with respect to calculation of the guideline range.
14 The relevant drug quantity the Court adopts is that amount
15 stipulated to, which I think -- 100 to 400 kilograms converted
16 drug weight. The offense of conviction does not carry a
17 mandatory minimum sentence. The resulting advisory guideline
18 calculation is as follows:

19 A total offense level of 25.

20 A criminal history category of III.

21 A guideline imprisonment range of 70 to 87 months.

22 A supervised release range of six years to life, six
23 years under the guideline calculation.

24 A fine range of 20,000 to \$2 million.

25 And a special assessment of \$100 is mandatory.

1 Will there be any additional evidence, Mr. Zellmer?

2 **MR. ZELLMER:** Your Honor, only the presentation that
3 I made regarding the 3553 factors. He is a 33 year old father
4 of two, numerous character reference letters that were
5 submitted to the Court, that he is a kind and generous
6 individual who helps out frequently in his community, that he
7 appears -- a very high number of -- a large number of people
8 within the community say that he frequently helps out feeding
9 individuals, providing food and other things to help raise
10 money for children in the community, that he is a kind and
11 generous individual.

12 And to that extent, I think that's particularly
13 relevant regarding the probability for rehabilitation, and
14 specifically how that goes toward this question of what
15 sentence is necessary -- is sufficient but not more than
16 necessary in order to achieve the goals of sentencing set out
17 in 3553.

18 I know I've repeated myself a bit, and I certainly
19 don't want to waste the Court's time. I've made that
20 presentation, I hope, effectively in my sentencing memo. The
21 net effect of that that I'd like to present to the Court is
22 that everyone who has spoken to me, and many people have, have
23 described Mr. Harris as a kind and generous individual, and I
24 think that bodes very well for the probabilities that he
25 will -- that he is suitable for rehabilitation, that with

1 proper rehabilitation that there should not be any further
2 danger to the community.

3 There is a need for both substance abuse treatment
4 because of his alcohol abuse in particular it appears to me,
5 but also in terms of vocational treatment -- sorry, not
6 treatment, but vocational training.

7 Your Honor, for all these reasons, I present to the
8 Court and submit to the Court that a punishment of 36 months, I
9 submit, would be sufficient in order to achieve those goals set
10 out in 3553.

11 **THE COURT:** Let me ask this question, Mr. Zellmer, in
12 terms of the history and characteristics of the defendant and
13 the nature and circumstances of the offense. I have a lot of
14 defendants who appear before me who come from, we'll say, best
15 case scenario, broken homes, no family support, you know,
16 living on the street day to day, that type of thing. And I
17 hear the arguments of, well, you know, no family support, that
18 mitigates because that was -- made things very difficult.

19 Then I have somebody like Mr. Harris who it appears
20 to me comes from a wonderful family, long-term military service
21 in the father. He's a preacher. I think mom may be --

22 **MR. ZELLMER:** Mom is a school teacher, Your Honor.

23 **THE COURT:** School teacher, school teacher. So, you
24 know, fine people. Then I look at what Mr. Harris has done
25 with the opportunity that he had -- has had with the family

1 like that and, in effect, he's risen to the -- up in terms of
2 leadership, I know he didn't get a role -- I don't think he got
3 a role adjustment.

4 **MR. ZELLMER:** No, Your Honor, there is no role
5 adjustment.

6 **THE COURT:** Okay. In terms of supplier to a group of
7 individuals who are selling controlled substances, and that
8 concerns me. It's almost as though -- I phrased the question
9 that way because Mr. Harris took advantage of the great
10 opportunity that he had, and the wonderful circumstances that
11 he had, to become more involved in criminal conduct rather than
12 less involved in criminal conduct. How does that factor in?
13 You may disagree with me on that analysis, and I certainly
14 would understand that, but how does that factor in?

15 **MR. ZELLMER:** Well, certainly all the facts that I
16 have seen in my involvement in this case is, in fact, that he
17 comes from a very kind, loving, and supportive family; not only
18 his parents, but also his siblings. I don't think there's any
19 doubt about that, that these are, as you say, fine people.

20 I would submit to the Court that the way that I
21 perceive the factoring in is that this support network is there
22 and can aid him into proper reintegration into society, proper
23 reintegration into the community, help support him in making a
24 legitimate life for himself going forward, and that that, along
25 with these personal characteristics that have been described,

1 not just by the family, to be fair, but also by a number of
2 other people not related to him, that those all together give
3 us very good hope, and that that is good news for the future
4 and for his probabilities for success upon reintegration into
5 the community.

6 **THE COURT:** All right. Mr. Galyon, does the
7 Government wish to be heard?

8 **MR. GALYON:** Just briefly. Judge, when we talk about
9 the nature and circumstances of the offense, obviously this is
10 a defendant who was using a number of different places in order
11 to carry out the conspiracy, not only his parents' home and the
12 vehicle present there at the residence in order to stash drugs,
13 but also the fact that he used a storage unit in his
14 girlfriend's name in order to store drugs there as well, used
15 the abandoned house on New York in order to distribute drugs at
16 that location for a long period of time, not just a week or
17 two, but over more than a year, according to the investigation.

18 And that as part of that he used multiple vehicles
19 while he was engaged in that activity, and then, of course,
20 when we get to February of last year, that during the course of
21 the investigation, when the officers located that Venza there
22 at Indiana Avenue where a search was conducted, that in that
23 vehicle was \$4400 in cash and over 200 grams of cocaine
24 hydrochloride.

25 So those -- those are certainly important related to

1 the nature and circumstances of the offense in that this is not
2 a one off. This is not an individual who just happens to get
3 involved for a short period of time, and I think that that's
4 important in the context of the history and characteristics of
5 this defendant, because when you look at his criminal history,
6 it's continued over a period of time. He's not a 20-year-old
7 person. I mean, he's older and has been involved in criminal
8 activity.

9 **THE COURT:** Thirty-three.

10 **MR. GALYON:** And that -- and, you know, most recently
11 he had the conviction in 2016 related to the felony possession
12 of cocaine, which was reduced from possession with intent to
13 sell and deliver cocaine as part of that case.

14 And I would argue that that's simply an inference --
15 or that there is an inference there that he is continuing to
16 escalate his activity in terms of drug involvement, and that
17 that's a real concern, because when we talk about protecting
18 the public, when we talk about providing deterrence and just
19 punishment, that those factors are certainly important -- just
20 as important as the nature and circumstances of the offense,
21 and that this defendant has -- as the Court said, he's been the
22 supplier for that group, and that that's a real concern, so I
23 would ask that you fashion a sentence accordingly. Thank you,
24 Your Honor.

25 **THE COURT:** All right. Mr. Harris, you're not

1 required to say anything. If you choose to remain silent, your
2 silence will not be held against you in any way whatsoever, but
3 you do have the right to address the Court before any sentence
4 is imposed; and if you wish to address the Court, now is the
5 appropriate time.

6 **THE DEFENDANT:** Thank you, Your Honor. First, I
7 would like to apologize to my family. I have made some
8 mistakes. I broke the law, and I know I should be punished for
9 it, so I'm accepting responsibility, but I've been gone from my
10 family for a while. I learned to change. It's really helping
11 me out. I just ask the Court to take it into consideration.

12 **THE COURT:** One of the things I never understand,
13 Mr. Harris is -- I'll use this case as an example. So
14 you're -- let's see, paragraph 71 -- arrested in 2013,
15 convicted in 2016, felony possession of a marijuana. You knew
16 that you could get six to 17 months in prison during this
17 period of unsupervised probation if you're caught engaging in
18 these transactions, and yet you continued to do business as
19 usual.

20 So when you stand up and say I've learned my lesson
21 because you've had some time to think about it, the first thing
22 that comes to my mind is what is different about here that --
23 from 2016? You knew the consequences of what you did, and you
24 knew that it could land you somewhere unfavorable, even on a
25 probation violation. So why -- what's changed now to make now

1 different?

2 **THE DEFENDANT:** Well, actually I started my own
3 businesses back after I got put on probation in 2016. My
4 businesses didn't go well. I kept running into a couple
5 roadblocks, a couple problems from stuff I just -- there's no
6 point speaking of because it really hasn't made a difference
7 for me, but I ended up turning, going back, but it had been a
8 while before I done what I was found guilty of doing. It was
9 just something I just bounced back to. It wasn't the right
10 thing. It's just something that happened to me.

11 **THE COURT:** All right. You can have a seat.
12 Mr. Zellmer and Mr. Galyon, when I look at this, in terms of
13 fashioning a sentence, I think there's very serious conduct
14 here. Prior convictions for felony offenses have not deterred.
15 Absent the stipulation to the 100 to 400 kilograms converted
16 drug weight, as you know from the prior calculation in the
17 presentence report, the defendant could very easily have been
18 facing a sentence of 135 months or more. The stipulation has
19 resulted in a reduction to this 70- to 87-month guideline
20 range. What I consider to be a relatively favorable
21 calculation with respect to acceptance of responsibility has
22 kept it in that range.

23 And so just thinking out loud for a moment, in case
24 you want to respond, I think, given the grounds that might
25 exist absent the stipulation for a much higher guideline

1 calculation, and given the grounds that I think exist, such as
2 concerns over acceptance of responsibility, some what I
3 perceive to be minimization here with respect to the actual
4 criminal conduct that might otherwise support a variance, I
5 ultimately conclude that with respect to a guideline range
6 sentence, that a sentence of 84 months is sufficient but not
7 greater than necessary, given how much benefit Mr. Harris has
8 received on various issues up to this point.

9 I think, as I indicated earlier with respect to
10 the -- anyway, that's where, at least at this point, I land;
11 but, admittedly, a lot of that is because I think there's an
12 argument that this case is much more serious, or could be
13 analyzed to be much more serious than that 84 months might
14 reflect, and you might -- you may disagree with me on those
15 factors. Anything you want to be heard on, Mr. Zellmer?

16 **MR. ZELLMER:** Your Honor, I think Your Honor has
17 heard all of my arguments. I don't -- I can't imagine that me
18 simply repeating them --

19 **THE COURT:** I think the main thing is in terms of the
20 stipulation, I've accepted the stipulation. I think there is
21 grounds to find that there was much more controlled substance
22 involved than is reflected in the stipulation, which is moving
23 me up toward the higher end of the guideline range. You may
24 disagree with that, or you may feel like that's unfair; if you
25 do, tell me now.

1 **MR. ZELLMER:** Well, 84 is in the middle of the
2 guideline range, so it would be, I think, difficult for me to
3 argue that it is unfair.

4 **THE COURT:** Okay. Mr. Galyon, do you want to be
5 heard on that?

6 **MR. GALYON:** No, Your Honor.

7 **THE COURT:** All right. Then you may remain seated
8 for just a moment, Mr. Harris.

9 In this particular case, as I indicated, taking into
10 consideration the arguments of counsel, the advisory guideline
11 calculation, and the factors listed under 18 USC
12 Section 3553(a), I find that a sentence of 84 months, followed
13 by six years of supervised release, is sufficient but not
14 greater than necessary. At least in this case of particular
15 significance to me are:

16 No. 1, in terms of the nature and circumstances of
17 the offense -- I think in fairness, I will say this: I don't
18 find the gun possession to significantly aggravate this case.
19 I think the plus two is properly applied, but there's no
20 evidence that I've seen that Mr. Harris actively deployed that
21 gun, or actively carried that gun with him while engaged in
22 transactions. Maybe he did, maybe he didn't, but certainly
23 there's no evidence in the case to support a finding such as
24 that.

25 I do think, in light of the information contained in

1 the presentence report, there are a number of factors that
2 significantly aggravate the nature and circumstances of the
3 offense. One, I think in terms of quantities of controlled
4 substances, I think this -- the amount calculated is very
5 generous to Mr. Harris in terms of not including what could be
6 other much larger amounts.

7 No. 2, although there's no adjustment for it, at
8 least in the Court's opinion, any time drug distribution
9 extends from cars and houses to other properties that are
10 controlled by groups of individuals who are distributing
11 controlled substances, here specifically I'm addressing the New
12 York Avenue property, which from the facts set forth in the
13 presentence report appears to having been a territory, in large
14 part, used by Mr. Harris and others involved with Mr. Harris
15 from which to distribute controlled substances, that that type
16 of activity significantly aggravates the nature and
17 circumstances of the offense.

18 Finally, with respect to the history and
19 characteristics of the defendant, this is -- I think it's three
20 prior felony convictions were insufficient to deter Mr. Harris
21 from engaging in this conduct.

22 As I say those factors out loud, and give
23 consideration, I do think there is likely ample grounds for a
24 variance in the case, perhaps substantial, but I'm going to
25 stay within the guideline range at 84 months, in light of the

1 letters and support that Mr. Harris has within the community,
2 and particularly in light of my respect for his parents and the
3 things that they have accomplished, which I do agree with
4 Mr. Zellmer on. I think the nature of that family and the work
5 of the parents suggest that Mr. Harris will have the support
6 that he needs within the family and the community upon
7 completion of this sentence, to suggest that a variance is not
8 either necessary or appropriate in this case.

9 So I will impose that sentence. Six years of
10 supervised release on the terms and conditions set forth in the
11 presentence report. Does either side have anything further
12 they wish to address before I impose that sentence?

13 **MR. GALYON:** Your Honor, the only thing I would have
14 is I would ask that when the Court is announcing the sentence
15 that the Court also order that forfeiture.

16 **THE COURT:** All right. If you will stand, please,
17 Mr. Harris.

18 Case No. 1:18CR249-2, United States versus Lee Marvin
19 Harris, as to Count Seven, it is hereby ordered that the
20 defendant is committed to the custody of the Bureau of Prisons
21 for a term of 84 months followed by six years of supervised
22 release.

23 A special assessment of \$100 is mandatory and is
24 hereby imposed. A fine is waived because of defendant's
25 inability to pay, and restitution is not imposed in this case.

1 The Court recommends to the Bureau of Prisons that
2 the defendant be designated to a facility where he may
3 participate in an intensive substance abuse treatment program
4 and to a facility where he may participate in occupational and
5 vocational training to include culinary arts as indicated in
6 the presentence report.

7 As part of this judgment, the Court hereby orders the
8 forfeiture -- what was that a Taurus firearm?

9 **MR. GALYON:** Springfield, Your Honor.

10 **THE COURT:** Springfield .40 caliber firearm as
11 described in the plea agreement.

12 During the period of supervised release, it is
13 ordered that the defendant shall abide by the mandatory and
14 standard conditions of supervised release. The following
15 special conditions are imposed:

16 One, the defendant shall submit to substance abuse
17 testing at any time as directed by the probation officer. The
18 defendant shall cooperatively participate in a substance abuse
19 treatment program, which may include drug testing and inpatient
20 or residential treatment, and pay for those treatment services
21 as directed by the probation officer. During the course of any
22 treatment, the defendant shall abstain from the use of
23 alcoholic beverages.

24 Two, the defendant shall provide any requested
25 financial information to the probation officer.

1 Three, the defendant shall not associate with or be
2 in the company of any Dope Boys Clique, gang members, or
3 security threat group member. The defendant shall not frequent
4 any locations where gangs or security threat groups congregate
5 or meet. The defendant shall not wear, display, use or possess
6 any clothing or accessories which have any gang or security
7 threat group significance.

8 Four, the defendant shall submit his person,
9 residence, office, vehicle, or any property under his control
10 to a warrantless search. Such search shall be conducted by a
11 United States probation officer at a reasonable time and in a
12 reasonable manner based upon reasonable suspicion of contraband
13 or evidence of a violation of a condition of release. Failure
14 to submit to such a search may be grounds for revocation. The
15 defendant shall warn any residents that the premises may be
16 subject to searches.

17 And, five, the defendant shall support his dependents
18 and/or comply with any order to make child support payments or
19 to make payments to support a person caring for a child.

20 Mr. Harris, in this case, you have waived your right
21 to appeal, except for those four grounds reserved in the plea
22 agreement itself. Mr. Zellmer will be responsible for advising
23 you with respect to your right to appeal and your waiver of
24 that right, and will file a notice of appeal if you instruct
25 him to do so.

1 Anything further, Mr. Zellmer?

2 **MR. ZELLMER:** No, Your Honor.

3 **THE COURT:** Mr. Galyon?

4 **MR. GALYON:** No, Your Honor.

5 **THE COURT:** All right. We'll be in recess until

6 1:00.

7 (At 11:03 a.m., proceedings concluded.)

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Sentencing - April 12, 2019

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

Date: 02/19/2020



Joseph B. Armstrong, FRR
United States Court Reporter
324 W. Market Street
Greensboro, NC 27401

Sentencing - April 12, 2019